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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/002,710	10/24/2001	Gary E. LeGrow	2001US405	2771

25255 7590 08/12/2003

CLARIANT CORPORATION  
INTELLECTUAL PROPERTY DEPARTMENT  
4000 MONROE ROAD  
CHARLOTTE, NC 28205

EXAMINER
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FUBARA, BLESSING M

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 08/12/2003

11

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/002,710

Applicant(s)

LEGROW ET AL.

Examiner

Blessing M. Fubara

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 9.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### DETAILED ACTION

Examiner acknowledges receipt of letter, prior art and request for continued examination under 37 CFR 1.114 filed 06/11/03.

#### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 06/11/03 has been entered.

#### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-9, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by LeGrow et al. (US 5,932,231).

LeGrow discloses a cosmetic formulation that comprises branched alkylsilsesquioxane of the general formula recited in instant claim 1 (abstract). In the general formula, R is a monovalent hydrocarbon of from 6-14 carbon atom such as hexyl, n-hexyl, I-hexyl, heptyl, n-octyl, i-octyl, nonyl, decyl, dodecyl and tetradecyl; x is from 1 to about 6 and the formulation is substantially free of alkoxysilane, chlorosilane, silanol functionalities and free of organic and inorganic compounds

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(abstract, column 2, lines 1-7 and 34-54 and claims 1-7 and 22). In example 3, the colorless odorless liquid of the silsesquioxane comprises 60% tris(trimethylsiloxy)n-octylsilane, 25% tetrakis(trimethylsiloxy)-1,3-di-n-octyldisiloxane, 9% pentakis (trimethylsiloxy)-1,3,5-tri-n-octyltrisiloxane and 4% of higher oligomers (column 6, lines 8-15).

Instant claim 1 requires the composition to have from 0.1 to 60% of at least one trimethylsilylalkyl-silsesquioxane and the prior art's 25% tetrakis(trimethylsiloxy)-1,3-di-n-octyldisiloxane or 9% pentakis (trimethylsiloxy)-1,3,5-tri-n-octyltrisiloxane meets the limitation in claim 1 since one of the trimethylsilylalkyl-silsesquioxane in the prior art is 25% or 9% or 4%. Leave on composition for personal care is future intended use and future intended use is not critical in a composition claim.

The teachings of LeGrow meet the limitations of the instant claims.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 10-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over LeGrow et al. (US 5,932,231) in view of Collin et al. (US 5,643,555).

LeGrow teaches the composition of the instant claims except that LeGrow fails to teach an emulsion. However, Collin discloses an emulsion composition that comprises polyalkylsilsesquioxane and the Collin's composition has pleasant texture, powdery and soft feel

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and cool effect (column 1, lines 39-46. Collin is thus relied upon for a teaching that polyalkylsilsesquioxane can be formulated as an emulsion.


Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare the alkylsilsesquioxane cosmetic formulation of LeGrow. One having ordinary skill in the art would have been motivated to prepare the formulation of LeGrow as an emulsion according to the teaching of Collin with the expectation that the alkylsilsesquioxane/polyalkylsilsesquioxane emulsion composition will provide pleasant texture, powdery and soft feel and cool effect when applied to the skin or hair.

6. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicants' cooperation is requested in correcting any errors of which applicants may become aware in the specification.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blessing M. Fubara whose telephone number is 703-308-8374. The examiner can normally be reached on 7 a.m. to 3:30 p.m. (Monday to Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on 703-308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3592 for regular communications and 703-305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Blessing Fubara   
Patent Examiner  
Tech. Center 1600  
August 10, 2003